STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, David H. Sawyer, and Richard A. Bandstra

**CATHERINE WILCOX, individually,
and as Next Friend of ISAAC WILCOX,
a minor,**

Plaintiffs-Appellants,

and **Docket No. 138602**

SUNRISE HOME HEALTH SERVICES, INC.,

Intervening Plaintiff,

v

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,**

Defendant-Appellee.

BRIEF ON APPEAL – AMICUS CURIAE
INSURANCE INSTITUTE OF MICHIGAN

PROOF OF SERVICE

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STATEMENT OF THE BASIS OF JURISDICTION

Amicus IIM agrees with the parties' jurisdictional statements in their respective Briefs on Appeal. This case is properly before this Court on leave granted. MCR 7.301(A)(2). Wilcox v State Farm Mut Auto Ins Co, 486 Mich 870; 780 NW2d 773 (2010).

STATEMENT OF QUESTIONS INVOLVED

I. Was Griffith v State Farm Mut Auto Ins Co, 472 Mich 521; 697 NW2d 895 (2005) correctly decided?

The courts below did not address this issue

Plaintiffs-Appellants answer, "Yes."

Defendant-Appellee answers, "Yes."

Amicus Curiae IIM answers, "Yes."

II. Did the Court of Appeals, in its decision in Hoover, erroneously conclude that Griffith requires the "incrementalization" of no-fault benefits?

The trial court answered, "No."

Plaintiffs-Appellants answer, "Yes."

Defendant-Appellee answers, "No."

Amicus Curiae IIM answers, "No."

III. Is State Farm liable for the full cost of housing, and not just the marginal increase in housing expenses, for a minor who was catastrophically injured in a motor vehicle accident such that larger and better equipped housing is necessary for his care, recovery, or rehabilitation?

The trial court answered, "No."

Plaintiffs-Appellants answer, "Yes."

Defendant-Appellee answers, "No."

Amicus Curiae IIM answers, "No."

STATEMENT OF INTEREST OF AMICUS CURIAE INSURANCE INSTITUTE OF MICHIGAN

Presently pending before this Court, on leave granted, in Docket No. 138602, is the appeal of Plaintiffs-Appellants Wilcox from the trial court and Court of Appeals interlocutory order-decisions in this case.

The basic issues in this case are: (1) the extent of a catastrophically injured motor vehicle accident victim's entitlement to reimbursement of his post-accident housing costs as no-fault personal protection insurance allowable expense benefits under MCL 500.3105(1) and MCL 500.3107(1)(a); (2) whether and to what extent that entitlement is dependent upon the causal relationship between the housing expenses and the motor vehicle accident injuries; and (3) whether the previous 2 issues have been correctly analyzed and resolved in this Court's decision in Griffith v State Farm Mut Auto Ins Co, 472 Mich 521; 697 NW2d 895 (2005).

The Insurance Institute of Michigan ("IIM") believes that these issues are very important, jurisprudentially significant issues of statutory construction, and that the issues were in fact addressed, analyzed fully, and correctly decided by this Court in Griffith, supra.

Plaintiffs' appeal seeks from this Court an interpretation of the No-Fault Act and a re-interpretation of this Court's Griffith decision, supra, that would broadly expand his housing cost entitlement, as a no-fault PIP benefit, and as a matter of law, to all of the housing costs of both himself and his entire co-resident family, all without the necessity

and limitation of a direct causal relationship between the motor vehicle accident injuries and the entirety of the post-accident housing costs.

The implications of Plaintiffs' argument and this Court's revisitation of Griffith in this case are enormous. As explained in Griffith itself, Plaintiffs' position stretches the benefit entitlement language of the No-Fault Act too far, converts the limited benefit entitlement system of the No-Fault Act into a general welfare scheme, and completely confounds the cost-containment goal of the Legislature in enacting the compulsory no-fault accident reparations system.

The IIM agrees with the position taken in the Brief on Appeal filed by Defendant-Appellee State Farm in this matter.

Amicus IIM is a government affairs and public information association. It represents more than 90 property/casualty insurance companies and related organizations operating in Michigan. IIM member companies provide insurance to 75% of the Michigan automobile market.

The IIM's purpose is to serve the Michigan insurance industry and the insurance consumer as a central focal point for educational, media, legislative and public information on insurance issues. In effect, the IIM serves as the official spokesperson for the property/casualty insurance industry in Michigan.

Consistent with its purpose, the IIM has an obvious interest in the correct construction and application of statutes pertaining to insurance , such as the statutes at issue in this case.

STATEMENT OF FACTS

Amicus Curiae IIM agrees with and adopts the Counter-Statement of Facts contained in Defendant-Appellee State Farm's Brief on Appeal.

STANDARD OF REVIEW

The issues in this case were decided in the trial court by partial summary disposition order. Those issues are legal issues involving statutory interpretation. For both reasons, review by this Court is de novo. Maiden v Rozwood, 461 Mich 109, 118; 597 NW2d 817 (1999); Griffith v State Farm Mut Auto Ins Co, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

ARGUMENTS

I. GRIFFITH WAS CORRECTLY DECIDED.

When this Court granted Plaintiffs' application for leave to appeal in this matter, this Court's April 16, 2010, order directed the parties to "include among the issues to be briefed . . . whether Griffith v State Farm Mutual Automobile Ins Co, 472 Mich 521; 697 NW2d 895 (2005), was correctly decided." Wilcox v State Farm Mut Auto Ins Co, 486 Mich 870; 780 NW2d 773 (2010).

The subsequently-filed briefs of both parties, Plaintiffs-Appellants Wilcox and Defendant-Appellee State Farm, explicitly state, right in their respective Argument I captions, that Griffith "was correctly decided."

Given this express and unanimous support, by the adversarial parties to this case, for this Court's precedential Griffith opinion, it would be anomalous and ironic indeed if this Court itself, upon revisiting Griffith in this case, were to disavow or retreat from it.

Amicus IIM joins with the parties in supporting this Court's Griffith decision. The IIM, too, believes that Griffith was correctly decided, as reflected in the apparent lack of controversy and unanimous support for it in this case.

This Court's Griffith decision is important here because it supplies, explains, and illuminates the legal standard and framework for resolving the disputed no-fault personal protection insurance (PIP) benefits issue in this case.

The general issue, in cases like Griffith and the instant case, is the compensability,

as a PIP benefit, under the No-Fault Act, of the "room and board" expenses of a catastrophically injured motor vehicle accident victim and no-fault benefit claimant. Griffith specifically dealt with a claim for food expenses (i.e., the board component of room and board). The instant case specifically deals with housing – related expense claims (i.e., the room component of room and board). But Griffith expressly addressed the instant housing accommodations issue as well, and the legal analysis and holding of Griffith obviously encompasses and controls not just food expense claims but also the instant housing expense claims.

It has long been recognized that, in order for a no-fault insurer to be obligated to pay an MCL 500.3107(1)(a) "allowable expense" claim, the claimed expense item must be: (1) "reasonable" as to amount; (2) "reasonably necessary"; actually "incurred"; and (4) motor vehicle accident related. Nasser v Auto Club Ins Ass'n, 435 Mich 33, 49-50; 457 NW2d 637 (1990); SPECT Imaging, Inc v Allstate Ins Co, 246 Mich App 568, 574; 633 NW2d 461 (2001); Anton v State Farm Mut Automobile Ins Co, 238 Mich App 673; 607 NW2d 123 (1999); Dengler v State Farm Mut Ins Co, 135 Mich App 645, 648-649; 354 NW2d 294 (1984).

The burden of proving these 4 entitlement elements falls on the plaintiff or claimant, and not on the defendant no-fault insurer. Nasser, supra, 435 Mich, at 49; Nelson v DAIIE, 137 Mich App 226, 231; 359 NW2d 536 (1984).

Any of these claim elements could be disputed issues of fact, requiring jury

resolution. In particular, the reasonable necessity of the item and the reasonableness of the charge for the item are generally questions of fact for a jury to decide. Nasser, supra, 435 Mich, at 48-50, 54-55; Attard v Citizens Ins Co of America, 237 Mich App 311, 318; 602 NW2d 633 (1999); Moghis v Citizens Ins Co of America, 187 Mich App 245, 248; 466 NW2d 290 (1990); Nelson, supra, 137 Mich App, at 231.

Griffith, supra, did not alter any of the foregoing basic no-fault PIP claim law. What it did was focus in on the accident-relatedness or causation element and clarify it in the specific context of a room and board expense claim.

Griffith specifically addressed the interplay of 2 provisions of the No-Fault Act, MCL 500.3105(1) and MCL 500.3107(1)(a), and the causation or accident – relatedness requirements/components of both provisions:

> "Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter."

MCL 500.3105(1) [emphasis added].

> "Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."

MCL 500.3107(1)(a) [emphasis added].

In the foregoing statutory provisions, this Court noted 3 separate causation references, all linking the claimed no-fault benefits to the motor vehicle injury accident. § 3105(1) requires an insurer to pay PIP benefits only if the benefits are "for accidental bodily injury" and only if the injury or injuries "aris[e] out of . . . the ownership, operation, maintenance or use of a motor vehicle . . ." Similarly, § 3107(1)(a) requires an insurer to pay "allowable expense" PIP benefits (i.e., "reasonable charges incurred for reasonably necessary products, services and accommodations") "for an injured person's care, recovery, or rehabilitation."

Based on these multiple statutory references linking no-fault PIP benefit liability/entitlement to motor-vehicle-accident-related injuries, this Court concluded in Griffith that:

> "'Accidental bodily injury' therefore triggers an insurer's liability and defines the scope of that liability. Accordingly, a no-fault insurer is liable to pay benefits only to the extent that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident."

(472 Mich, at 531; emphasis added).

Accordingly, to Griffith, whether a claim expense is a food or a housing expense, no-fault personal protection insurance does not cover "normal" "ordinary" "quotidian" "everyday" living expenses that do not "differ from what an uninjured person" would need (472 Mich, at 531-532, 536, 540). Just because an expense is reasonably necessary to a person's care, sustenance, or survival in general does not render it an allowable

expense (472 Mich, at 534, 536, 539). To the extent that a person's needs "have not been affected by his injuries," or to the extent that an expense is not "necessary because of injury sustained through the use of a motor vehicle," the expense is not a no-fault covered expense (472 Mich, at 535, 539).

II. PLAINTIFFS-APPELLANTS' CLAIM THAT GRIFFITH IS NOT PROPERLY BEING APPLIED TO THIS CASE IS ERRONEOUS.

Subsequent cases have expressly relied on, followed, and applied this Court's Griffith decision, supra, in the specific context of no-fault housing expense claims.

In Hoover v Michigan Mutual Ins Co, 281 Mich App 617; 761 NW2d 801 (2008), a catastrophic motor vehicle injury case involving housing needs, expenses, and claims similar to the instant case, the Court of Appeals reversed the trial court, in part, for not properly following and applying Griffith. The Hoover panel quoted extensively from Griffith, reading Griffith as effectively standing for the proposition that a motor vehicle accident victim's housing costs may qualify as a no-fault reimbursable/compensable §3107(1)(a) "allowable expense" if causally connected to – i.e., affected by – the injuries suffered in the motor vehicle accident, but only to the extent of the causal connection.

In Ward v Titan Ins Co, __ Mich App __ (No. 284994; rel'd 3/16/10), the Court applied Griffith similarly, holding that the Griffith analysis would also apply to housing costs, and that, pursuant to Griffith, housing costs are only no-fault compensable to the extent that those costs become greater as a result of the accident.

In sum, Griffith and its progeny, supra, stand for the proposition that a housing expense, in order to be a no-fault "allowable expense," must be causally related to or affected by the claimant's motor vehicle accident injuries, but coverage is only to the extent of that causal connection. Simply because a person's housing needs are affected in

part, or simply because one housing expense is no-fault covered, does not mean that all of that person's housing expenses are shifted to the no-fault insurer.

But that complete shift to no-fault of responsibility for all housing expenses, upon the showing of any connection between housing costs and injury-accident, is precisely Plaintiffs-Appellants' position in this case.

Pursuant to the parties' cross-motions for partial summary disposition, the trial court, relying on Griffith and Hoover, supra, rejected Plaintiffs' argument, agreed with Defendant that it was not liable for the entirety of Plaintiffs' claimed housing expenses, but left the disputed issue(s) of the extent of Plaintiffs' reasonable and reasonably necessary accident-related housing expenses to be decided by a jury.

Amicus IIM agrees with Defendant State Farm that the trial court got the issue exactly right, and that the Court of Appeals' subsequent remand order-decision erred only in declaring the disputed housing accommodations allowable expense issue to be, in all respects, a court-decidable issue of law only.

In their interlocutory appeal to this Court, Plaintiffs challenge the denial below of their claimed entitlement, by summary disposition, to all of their housing expenses as no-fault covered allowable expenses. Plaintiffs expressly agree with Griffith and its causation or accident-relatedness analysis, but Plaintiffs contend that the Court of Appeals, in Hoover, as relied on by the courts below in the instant case, misinterpreted and misapplied Griffith.

Plaintiffs label their disagreement with Hoover, et al., or the error in Hoover, as "incrementalism." That is obviously a pejorative term tending to evoke images of some sort of incremental, gradual, or little-by-little loss of entitlement. However, what it actually refers to and complains about is Plaintiffs' no-fault housing allowable expense benefits being limited to only the incremental difference between their unrelated-to-the-injury-accident housing expenses and the greater housing expenses incurred as a result of the accident-injuries.

Plaintiffs' incrementalism complaint is mistaken. It overlooks the fact that Hoover, et al., faithfully quoted and applied the causation analysis and test set forth in Griffith, which explicitly stated, as quoted supra, that the causation or injury-accident-relatedness requirement of the No-Fault Act both "triggers" and "defines the scope of" (i.e., limits) the no-fault liability or entitlement, leaving the no-fault insurer "liable to pay benefits only to the extent that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident" (472 Mich, at 531; emphasis added).

In support of their "anti-incrementalism" arguments, Plaintiffs also suggest that it is too difficult or unworkable to make the presently-required causal calculations regarding the "extent" or the "difference" between pre and post-accident housing expenses. Plaintiffs are wrong. Determining the extent of an injured claimant's accident-related special needs is precisely what is routinely done by claims specialists, rehabilitation experts, case managers, etc.

III. WITH OR WITHOUT THE GUIDANCE OF GRIFFITH AND ITS PROGENY, PLAINTIFFS' TOTAL HOUSING EXPENSE CLAIM IS WAY BEYOND ANYTHING THAT IS EVEN ARGUABLY COMPENSABLE UNDER THE NO-FAULT ACT.

Let's pretend that we don't have this Court's Griffith decision and analytical framework to turn to for guidance in resolving a no-fault PIP benefits allowable expense housing claim. All we have is the language of the applicable No-Fault Act provisions, quoted supra, and the other, undisputed, well-established case law, supra, construing the various elements of a PIP claim (reasonably necessary, reasonable as to amount, incurred, and injury-accident-related); who carries the burden (Plaintiff); and who decides the issue.

Amicus IIM believes that we would, in any event, reach the same result as the trial court did in this case.

The particular facts of this case help to illustrate the point. They are extreme. Often, courts hear parties making "slippery slope" arguments – i.e., the court shouldn't make a particular ruling or construction of the law because it will only lead, eventually, to absurd, unforeseen, unjustifiable consequences. With the scope of Plaintiff's housing claim in this case, we appear to have already approached the end point.

The scope of Plaintiffs' housing benefits claim appears to be undisputed. At the time of the then 4-year-old Isaac Wilcox' catastrophic motor vehicle injury-accident on November 24, 2004, which left him a ventilator-dependent quadriplegic, the entire

Wilcox family of 5 or 6 (mother, father, 3 children, and, sometimes, grandma) was living in a 3-bedroom rental apartment that cost the family $950.00 per month, including utilities. Following the accident, and with Defendant State Farm's assistance, the Wilcox family moved, on a temporary basis, into a partially barrier-free rental home costing $1850.00 per month.

Eventually, without involving the very much interested State Farm, the Wilcox family unilaterally selected and purchased a 4,000 square foot home, with a price tag of $280,000.00, that included 4 bedrooms, 2 baths, a pool, a pond, substantial acreage, an elevator, and wheelchair accessibility. The Wilcox family also anticipated additions and modifications to the home totaling $265,000.00.

Plaintiffs' no-fault housing claim seeks from Defendant State Farm, by summary disposition, all of the temporary and permanent housing costs of the entire Wilcox family, including but not limited to the full $280,000.00 purchase price of the new home and acreage and also the full $265,000.00 price of all modifications to that home.

First of all, just as a matter of common sense as well as the actual benefit entitlement language of § 3107(1)(a) of the No-Fault Act which uses the words "the injured person," Defendant State Farm is not responsible for furnishing allowable expense housing benefits to anyone but Isaac Wilcox, the injury-accident victim himself. There is actually on-point case law that makes this seemingly obvious point:

> "As a general rule, defendant would not be obligated to pay medical expenses for plaintiff's family, because those family

> members were not injured in the accident. See Keller v Citizens Ins Co of America, 199 Mich App 714, 715-716; 502 NW2d 329 (1992)."

Attard v Citizens Ins Co of America, 237 Mich App 311, 323; 602 NW2d 633 (1999).

Second, in addition to State Farm's non-liability for the housing expenses of the entire Wilcox family besides Isaac, where is the liability for the entirety of even just Isaac's housing expenses. Given the accident-relatedness requirements of the No-Fault Act, supra, and the ordinary housing costs that would have been incurred for Isaac without the accident, the actual economic housing loss suffered in the accident was not Isaac's entire post-accident housing expenses.

As already briefed at length by Defendant State Farm and explained by the Griffith opinion, supra, despite the fact that the mandatory insurance coverages, including PIP benefits, provided by Michigan's No-Fault Act are as generous or more so than in any other jurisdiction, those benefits are, nevertheless, limited rather than limitless. The No-Fault Act is not a general welfare act and does not guarantee/provide a subsistence income for injury-accident victims.

This Court in Griffith, supra, 472 Mich, at 539, also emphasized the point, with multiple citations, that "Plaintiff's interpretation of MCL 500.3107(1)(a) stretches the language of the act too far and, incidentally, would largely obliterate cost containment for this mandatory coverage."

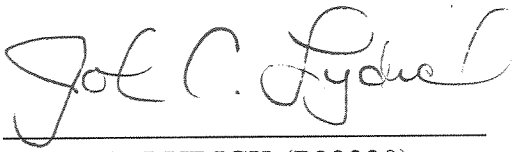
This is a point of great concern to Amicus IIM. While our case law typically

focuses on the generous benefits afforded by Michigan's mandatory no-fault coverages, it is often forgotten that the very survival of Michigan's no-fault reparations system is dependent upon the careful balance provided by another key purpose of the act: cost containment. No matter how generous the benefits are, their cost is borne by the insurance premium-paying public. If no-fault insurance cannot be provided at affordable, fair, and equitable rates, the system will fail and cease to exist.

RELIEF

For all of the foregoing reasons, Amicus IIM requests that this Honorable Court affirm the partial summary disposition order of the trial court in this matter.

Respectfully submitted,



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